

April 4, 2024

VIA ECF

The Honorable Margo K. Brodie
The Honorable Joseph A. Marutollo
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *In re Payment Card Interchange Fee & Merchant Discount Antitrust Litigation*
Nos. 05-md-1720 (MKB)(JAM) and 13-cv-5745 (MKB)(JAM)

Dear Chief Judge Brodie and Magistrate Judge Marutollo:

We write on behalf of the Target Plaintiffs¹ to ask the Court to set a final pretrial scheduling conference in the Target case.

All pending summary judgment motions in the Direct Action Plaintiffs' cases have now been resolved. The Target Plaintiffs' claims are ready to be tried by a jury. Entry of a final pretrial scheduling order will ensure all required components of a Joint Pretrial Order—including the exchange of witness lists, exhibit lists, jury instructions, and other required components—are completed and exchanged timely, as required by the form Joint Pretrial Orders of this Court and the Southern District of New York, where the Target Plaintiffs' claims were first filed.

We cannot make further progress toward establishing a final pretrial schedule and preparing the Joint Pretrial Order without the Court's assistance. The Target Plaintiffs joined the 7-11 Plaintiffs in trying to negotiate agreed deadlines for these tasks with the Defendants, sending Defendants a concrete proposed schedule and inviting the Defendants' comments. After several conferences with them, Defendants remain emphatic: they are "not prepared to agree to dates for submissions concerning trial exhibits, witness lists, voir dire, jury instructions, and verdict forms *until we have clarity on the forum, parties involved, and relief sought*, including resolution of the dispute over the DAPs' position that they're entitled to seek injunctive relief." (Emphasis added).

¹ The Target Plaintiffs in Case No. 13-cv-5745 (MKB)(JAM) are: Target Corporation, Macy's, Inc., The TJX Companies, Inc., Kohl's Corporation, Staples, Inc., J.C. Penney Corporation, Inc., Office Depot, Inc., L Brands, Inc., OfficeMax Incorporated, Big Lots Stores, Inc., Abercrombie & Fitch Co., Ascena Retail Group, Inc., Saks, Incorporated, Lord & Taylor LLC, Chico's FAS, Inc., Luxottica U.S. Holdings Corp., American Signature, Inc., and their respective affiliates and subsidiaries.

The Target Plaintiffs do not believe Defendants' request for "clarity" is (or should be) an impediment to setting deadlines to complete the Joint Pretrial Order. A conference with the Court could, however, provide the clarity Defendants insist they must have. Accordingly, in addition to establishing deadlines to submit the required components of a Joint Pretrial Order, the Target Plaintiffs respectfully request that the Court also consider the following issues at the conference:

1. Given the Court's expertise in this matter, is the Court willing to try the Target Plaintiffs' case or does it prefer to remand it to its court of origin, the Southern District of New York?
2. If the Court is willing to try the Target Plaintiffs' case, when would the Court reasonably expect to have time on its docket to try it?

The Target Plaintiffs, like the 7-Eleven Plaintiffs, submit that it would be helpful to the Court for the parties to flesh out their respective positions in a status report, and that the parties would benefit from the Court's guidance on these issues at the status conference. We propose that such a report be filed jointly, three days in advance of whatever date the Court establishes for the conference.

We thank the Court for its continued attention to this matter.

Respectfully,

/s/ Kathy Patrick
Kathy Patrick
Gibbs & Bruns

/s/ James A. Wilson
James A. Wilson
Vorys Counsel